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ABSTRACT

This report attempts to summarize recent attitudes toward and developments in tenure-related issues in American higher education. Modern academic tenure rests on the principles of academic freedom and economic security. Currently, public perceptions of the notion of tenure are often quite negative, with some critics charging that educators have become complacent about the value of academic freedom, and that the concept protects little except security of tenure and the "prerogative of frivolity." Tenure issues that appear repeatedly are: (1) the current necessity of tenure for the protection of academic freedom; (2) the view of tenure as simple job security; (3) the question of whether tenured faculty produce less than their colleagues; (4) the relationship of tenure to the demise of mandatory retirement; and (5) tenure as a possible source of institutional inflexibility. The paper describes possible alternatives to the current tenure system, including: research and teaching dual-track tenure systems; five-year contracts with extra financial incentives; better working conditions; tenure contracts negotiated at hiring and designed to fit the accomplishments and capabilities of the individual and projected long-term needs of the institution; and post-tenure reviews. (Contains 22 references.) (MAH)

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TENURE ISSUES IN AMERICAN HIGHER EDUCATION: AN OVERVIEW

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TENURE ISSUES IN AMERICAN HIGHER EDUCATION: AN OVERVIEW

This report attempts to summarize recent attitudes toward and developments in tenure-related issues in American higher education.

BACKGROUND

Modern academic tenure rests on two principles defined in the American Association of University Professors' 1940 Statement of Principles on Academic Freedom and Tenure: academic freedom and economic security (American Association of University Professors, 1995). The policy states:

> Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society (p. 3).

The current climate is not hospitable to the notion of tenure, with public perceptions often quite negative. As Mary Burgan, general secretary of the AAUP notes: "Defending tenure in a period impatient with the past may seem like defending the fountain pen in an age of computers" (Burgan & Greenberg, 1995, p. 34). She believes that academic freedom certainly remains an issue, but that educators have become more complacent about its value. Shils (1993) argues that the current interpretation of academic freedom, in which there are "no criteria of validity or truthfulness, because no statement can ever be truer than any other statements..." leaves little for academic freedom to protect "except security of tenure and the prerogative of frivolity. That is not what the founders of the American Association of University Professors had in mind when they took in hand the strengthening of academic freedom in American colleges and universities" (p. 209). On the other hand, most faculty, individually and through their professional

organizations, insist on the vital importance of tenure for protection of academic freedom. Following a negative portrayal of tenure that aired last February on 20/20, AFT President Albert Shanker made the traditional case for tenure and attempted to debunk popular myths surrounding it (Shanker, 1996).

WHO IS TENURED?

One source notes that slightly more than one-third of all college and university faculty have tenure. The same source states that 53% of all full-time faculty hold tenure (Lee, 1995, p. 1). Depending on the position being taken, these numbers are referred to in very different ways. Defenders of tenure may use these statistics to attempt to minimize the impact of tenure; almost half of all full-time faculty are **not** tenured. Critics, on the other hand, use the same numbers to suggest that the large number of tenured faculty creates problems such as institutional inflexibility in budgetary matters.

TENURE ISSUES

Several issues appear repeatedly in the literature, with both sides represented. One author (Benjamin, 1995) in a defense of traditional faculty tenure, portrays them as common misconceptions about tenure. The issues are: 1) the current necessity of tenure for the protection of academic freedom; 2) the view of tenure as simple job security which might be "exchangeable for other economic benefits;" 3) the question of its effect on academic quality--that is, do tenured faculty produce less than their colleagues? 4) the relationship to the demise of mandatory retirement; and 5) tenure as a possible source of institutional inflexibility. Milton Greenberg (Burgan & Greenberg, 1995, p. 35) asserts that such inflexibility has negatively impacted racial and ethnic minorities and women, and that the "...majority of tenured college and university professors are white males between the ages of 35 and 55 who have unlimited time to serve. The

ranks of part-time and other untenured faculty are made up largely of women and minorities."

DENIAL OF TENURE

Those denied tenure usually fall into two groups: a protected class or white, male, and under 40 (Drapeau, 1995). Because the Supreme Court has stated that the right of due process does not apply to nontenured faculty seeking renewal or faculty members seeking tenure, faculty have turned to other legal bases to make their case--usually, discrimination (Bednash, 1991).

In recent years, both peer and outside reviewer evaluations have come under attack.

One such incident occurred when a Vassar professor who was denied tenure compared her record to that of five tenured professors, thus focusing attention on individuals who had not been directly involved in the departmental decision to deny tenure (Leatherman, 1995).

TENURE REVIEW FILES AND CONFIDENTIALITY

While the courts have historically remained distant from decisions involving academic tenure and promotion, this tradition started to change with the Civil Rights Act of 1964, when "...the courts gradually began to change their position and rendered decisions unfavorable to the academic community. In 1990 this unfriendly posture was magnified by a unanimous decision of the Supreme Court in *Pennsylvania v. EEOC*. This ruling greatly diminished the traditional protection afforded professors in their evaluations of peers" (Galle and Koen, 1993, p. 23). An assistant professor at the Wharton School of Business, denied tenure in 1985, filed a charge with the EEOC claiming discrimination on the basis of race, sex, and national origin. She is Asian-American. In its investigation, the EEOC requested that the university provide confidential peer review materials related to her tenure review process. When they failed to deliver the documents, the EEOC pursued the matter legally. It finally went to the Supreme Court, who agreed to settle

the issue of whether tenure review files are protected from disclosure by a special privilege. In a unanimous decision, the Court found neither a common law nor a First Amendment academic freedom privilege for tenure review files. Some believe that, with this protection gone, evaluators of a person's request for tenure may be less open--that the lack of confidentiality threatens the quality of the evaluations. Others, however, believe that the decision does not present a serious threat to tenure and point out that what the University of Pennsylvania sought to protect was not academic freedom in the traditional sense--that is, allowing faculty to teach as they see fit--but institutional academic freedom or autonomy--"the right to be free from outside scrutiny even when allegations of discrimination have been brought against the institution" (Galle and Koen, 1993, p.26). That claim, of course, was unacceptable to the Supreme Court.

RECENT DEVELOPMENTS

In September, 1993 some faculty at Howard University asked for President Franklyn Jenifer's resignation. Faculty were angry about the new handbook and a statement that any professor or officer may be removed by the trustees "when, in the board's judgment, the interests of the university require it." President Jenifer stated that he endorsed AAUP's tenure policy and that the faculty wanted a statement that tenure was guaranteed for life. (Leatherman, 1993).

In 1997, a new Florida State University campus in Fort Myers will open with no tenure-track positions. Two years ago, Bennington College in Vermont "...sacked one-third of its faculty and abolished tenure altogether in a radical cost-cutting move" (Chandler, 1996, p. 40).

A recent article in *The Chronicle of Higher Education* (Magner, 1996) describes the conflict at the University of Minnesota. Faculty believe that new tenure policies proposed by the Board of Regents would effectively eliminate tenure. Two main provisions were vigorously opposed by faculty: one would allow the regents to cut base salaries of faculty members for

reasons other than a financial emergency; the other would allow them to fire tenured professors if their programs were eliminated or restructured and the university was unable to retrain or reassign them. Some faculty perceive that the regents' proposals reveal a lack of respect for the faculty. Even the university's president has criticized the proposal. News of the situation at Minnesota is of interest beyond the academic community. An article in *Business Week* (Chandler, 1996) notes that recent developments in Minnesota have caused a physics professor to attempt to unionize faculty in response. This result, of course, is commonly cited as a danger of doing away with tenure.

Another technique available to dilute the power of tenure is to thin the ranks of tenured faculty through attrition. When tenured faculty resign, they may be replaced with part-time faculty. "Some 47% of university faculty now are part-timers, vs. 32% in 1980, according to AAUP" (Chandler, 1996, p. 40).

Most articles concerning tenure reveal the typical expected positions: administration pointing out its weaknesses and faculty defending its necessity. For that reason, it is noteworthy that a group of "insiders," the American Association for Higher Education, began a two-year project to re-examine tenure. Russell Edgerton, the association's president, acknowledges the controversial nature of the investigation. He defends the exploration, saying that tenure has generated so much public discussion that it's time for the academy to openly discuss it. Furthermore, he suggests that, privately, many faculty members criticize the current system. The AAHE proposal is in two parts: the first is a series of reports on various career options involving moving among disciplines and in and out of academic life. The second, and most controversial, concerns alternatives to tenure. It will look at institutions that have never had tenure, such as Hampshire College; those that have recently changed the criteria (the University of California

system); and those who have dropped it--according to this source, about six in the past two years, among them, Lindenwood College and the College of the Ozarks (Magner, 1995, March 31, p. A17).

Some individual faculty members voice public criticism of the current tenure system. One suggests that it "...does little to protect the academic freedom of those who have it, beyond the protection already available in the First Amendment and in our shared ethos as a community of scholars" (Helfand, 1995, p. B2). He believes that a tenured faculty, rather than encouraging an intellectual exchange of ideas, can actually restrict them. This opponent of traditional tenure details his career, emphasizing that being a contract employee has offered certain benefits.

ALTERNATIVES TO TENURE

Many of these critics, both in administrative roles and teaching, suggest alternatives to the current tenure system. Among the suggestions: a dual-track tenure system for faculty--a "research" track or a "teaching" track. Teaching competency would be expected of all, but emphasis would be on one facet or another. Faculty would retain the right to "switch tracks" if desired. The author claims that among the benefits would be a reduction of "second-rate scholarship, the sort that is read only by tenure committees and parents of the tenure candidates" (Parini, 1995, p. A40). Another author emphasizes that faculty need incentives to give up the current system. Many possible plans are suggested. A five-year contract with extra financial incentives would provide flexibility. If, at the end of the fourth year, the institution did not renew the appointment, the faculty member would be able to choose either a year's paid leave or a lump-sum payment equal to an annual salary. Better working conditions--such as a 25 % course load reduction, a graduate assistant, or extra travel funds--might be adequate incentive to forgo tenure. Finally, a willingness to allocate seats on the board to faculty "more or less in proportion to the

percentage of the full-time faculty (up to 49%) that relinquish any claim to tenure" is proposed (Chait, 1994, p. 29). Yarmolinsky (1996) suggests yet another alternative, designed to reconcile advantages of tenure and institutional need for flexibility. "Why not tenure to fit the accomplishments and capabilities of the individual and the projected long-term needs of the institution? What if each tenure contract were negotiated, at the time the individual was hired, around the locus of the tenure commitment?" (p. 19) The author proposes that such a system would broaden the incentives for scholarly work, encouraging young faculty to engage in activities such as teaching a general education course or team-teaching with a colleague in another discipline-- activities that they might otherwise avoid in order to focus on research. This approach to tenure could be used to accommodate the needs of the institution and the individual's strengths.

POST - TENURE REVIEW

While such alternatives-to-tenure proposals are circulating with increasing frequency, more attempts to change existing tenure systems appear to focus on the post-tenure review. A growing number of institutions have adopted such systems, which vary widely. Some are merely collegial evaluations designed to improve teaching. Others include the possibility of termination of employment. Most institutions which have instituted post-tenure review make it mandatory; Kentucky's system is unusual in this respect. It is used only for those professors who receive consistency low ratings on their merit reviews (Magner, 1995, July 21).

Some believe that post-tenure review has taken on increasing importance in recent years because budgetary restrictions have resulted in less money for merit pay, so annual performance reviews offer less motivation to perform well. Also, the elimination of a mandatory retirement

age for professors has caused institutions to look for other ways to track the performance of senior professors (Magner, 1995, July 21).

An October issue of *The Chronicle of Higher Education* notes recent developments in the state of Florida. The Florida Board of Regents has voted to require tenured professors in the state university system to undergo regular performance evaluations. Each tenured faculty member would be evaluated at least once every seven years. Poor reviews could result in disciplinary action, including dismissal. The plan encourages universities to arrange multi-year contracts with professors in lieu of tenure. The United Faculty of Florida, the union which represented professors, helped to develop the plan over a two-year period. To some extent, the typical difference of opinion is evident: a spokesman for the board indicated that the faculty union did not perceive a threat to academic freedom. But Judy Solano, head of the state's Advisory Council of Faculty Senates, said that the plan could limit academic freedom and "chip away at the notion of tenure" (Haworth, 1996, p. A15).

Administration may view post-tenure review as a way to demonstrate accountability to the public and defend the tradition of tenure from its detractors. If used well, it could salvage struggling professors and help those who are already doing well to do better.

Faculty are mixed in their response to post tenure review. Some believe that it will protect the existing system--that the alternative might be to disband it totally. Many hope that it will be used to reward effective teachers and help those who need improvement. Some feel it constitutes a real threat to tenure and point out a perceived flaw in the system--that the quality of such a review is dependant on honesty and openness. "The colleagues who conduct tenure reviews do so with the security tenure provides. Those who conduct periodic reviews know they will be next" (Benjamin, 1995, p. 19). The implication, of course, is that faculty conducting post-tenure

reviews may be tempted to go easy on colleagues, knowing that the shoe will soon be on the other foot.

A questionnaire sent to the provost or academic vice president of one hundred institutions, with a return of 63 percent, indicated that 72 percent of the institutions regularly review and evaluate tenured professors. In over 92 percent of the cases, the evaluation process is mandatory, and, in another 5 percent, the process is mandatory in some departments. The frequency of evaluation varies, with 40 percent occurring every year. (The author suggests that this disproves the notion that faculty members are never held accountable for their performance.) He also asked respondents to choose one of three choices: post tenure review was working extremely well, or it was working fairly well but was still in process of refinements, or it was not working well and might be dropped. Eighty-six percent chose the second option: the process is working well, would continue to be improved, and would be continued (Arden, 1995, p. 39).

Some educators, skeptical of the merit of a major change in this regard, point out that institutions already have the necessary framework in place--but those who are in a position to act fail to do so. Of course, no review system will have significant impact if deans and department chairs refuse to deal with ineffective faculty members.

CONCLUSION

Altbach (1995) asserts that intensity of the debate over tenure has largely ended and that tenure is not currently threatened. He states that "the professoriate sees tenure as one of its most important perquisites and has defended it vigorously. Administrators and policy-makers have recognized the centrality of tenure to the self-concept of the profession" (p. 37). However, a review of the literature suggests a less tranquil period.

Tenure is at the heart of much discussion, both in the academy and out. For the most part, traditional lines are still drawn, with faculty usually declaring the continued necessity of the protection of tenure. Strong feelings are engendered by any discussion which suggests the possible weakening of existing protections. Administration is seeking creative solutions to the problems they perceive to be a result of tenure. While some institutions have dropped tenure systems or changed them dramatically, the more common scenario appears to be the growing number of post-tenure review systems being put into place. And, of course, the increasing number of non-tenured faculty due to attrition can't be discounted.

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